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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/910,520	07/20/2001	Samuel Farchione	FSP-10002/08	2097
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GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021				
			EXAMINER STALLARD, JOSEPH A	
			ART UNIT 3715	PAPER NUMBER

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/910,520

Applicant(s)

FARCHIONE, SAMUEL

Examiner

J. Andrew Stallard

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/8/2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 16-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

In response to the amendment filed April 8, 2005, claim 15 is canceled and claims 1-14 and 16-43 are pending.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 8, 2005 has been entered.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-14 and 16-43 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In order for a claim to be statutory it must show a practical application. A practical application may be demonstrated by either (a) showing a physical transformation or (b) otherwise showing a useful, concrete and tangible result. In the present case, there is no physical transformation occurring, each of the steps is intended to occur with the aid of computer system. There is also no tangible result. Although data is received and manipulation of the data is performed, the result of these steps are never realized in a "real-world" application of communication to the user, thus there is no real-world practical application of the abstract idea (fashion selections).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 8-14, 16, 18-22, 24-33, 35-39 and 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacFarlane et al. (US 5,311,293) in view of Fabbri et al. (US 4,561,850).

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Claims 1, 16, 27, 33: MacFarlane discloses a method for selecting fashion information for an individual comprising the steps of: providing a style database including complimentary fashion information having cosmetic data (e.g., *color charts (fig. 4), swatch packs (fig. 5) and foundation color charts (fig. 6)*) and physical characteristic data (e.g., *skin color*); providing a personal characteristic database (e.g., *memory*) adapted to receive physical characteristic data for an individual (*col. 2, 48-51*); providing an input device operable to capture physical characteristic data about the individual (*10; color measuring device*); capturing with the input device physical characteristic data of the individual; receiving in the personal characteristic database physical characteristic data for a physical characteristic for the individual (*Fig. 2; Skin tone of a person's skin are captured and received by the colorimeter.*); receiving in the style database a requested result for the individual, as in claim 27 (*It is inherent in a system to request a result and receive information based on that request. For example, in using a foundation color chart, a result is requested by the act of retrieving the chart and looking up information in it.*); comparing said physical characteristic data for the individual with the style database to identify complimentary fashion selections that are appropriate for the individual based upon the physical characteristic data received in the personal characteristic database; identifying for the individual complimentary fashion selections that are appropriate for the individual based upon the physical characteristic data received in the personal characteristic database (*col. 2, 47-63; Hunter b value is used to identify complimentary fashion selections, such as fabric, cosmetics and hair colorants.*);

MacFarlane does not expressly disclose physical characteristic data for at least two physical characteristics for the individual. Fabbri shows this feature to be old in the fashion art. Fabbri teaches two characteristics selected from skin tone and the color of the user's eyes (*col. 1, 59-64*). Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate two physical characteristics selected from the aforementioned groups into the method and system of MacFarlane, in light of the teaching of Fabbri, in order to facilitate the selection of colors for personal grooming.

Claim 5: MacFarlane discloses wherein said cosmetic data comprises at least one cosmetic characteristics selected from a group consisting of: cosmetic brand, cosmetic style, colors (*i.e., foundation colors*), textures, qualities or chemical qualities.

Claims 6, 17 and 34: MacFarlane does not disclose expressly physical characteristic data is selected from a group consisting of: skin color, skin tone, hair color, eye color, facial shape, body proportions, and body measurements. However, Fabbri teaches two characteristics selected from skin tone and the color of the user's eyes (*col. 1, 59-64*). Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate two physical characteristics selected from the aforementioned groups into the method and system of MacFarlane, in light of the teaching of Fabbri, in order to facilitate the selection of colors for personal grooming.

Claims 8, 24 and 41: MacFarlane discloses wherein said input device comprises a colorimeter (*Fig. 1, 10*).

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Claims 9, 25 and 42: MacFarlane discloses wherein said input device comprises a spectrophotometer (*col. 6, 56-57; Color measuring device (10) can be a colorimeter or a spectrophotometer.*).

Claims 10, 26 and 43: MacFarlane discloses wherein said input device comprises a computer (*15; CPU*).

Claims 12, 18, 28 and 35: MacFarlane discloses wherein said style database further comprises clothing information (*e.g., fabric*).

Claim 13: MacFarlane discloses wherein said clothing information includes clothing data selected from a group consisting of: fabric color data (*i.e., fabric color*) and fabric texture data, size data, and style data.

Claim 14: MacFarlane does not disclose expressly wherein said personal characteristic database is accessible via a computer network. However, the examiner takes Official Notice that having databases accessible via a computer network is old and well known in the art of data distribution. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate a database that is accessible via a computer network into the method and system of MacFarlane in order to enable remote access to the databases.

Claims 19, 29 and 36: MacFarlane discloses wherein the clothing information is selected from a group consisting of: clothing size, clothing style, clothing fabric color (*i.e., fabric color*) and clothing fabric texture.

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Claims 20, 30 and 37: MacFarlane discloses wherein the complimentary fashion information comprises cosmetic data (*e.g.*, *color charts (fig. 4)*, *swatch packs (fig. 5)* and *foundation color charts (fig. 6)*).

Claims 22, 32 and 39: MacFarlane discloses wherein said fashion selections are selected from the group consisting of cosmetic information, clothing information (*e.g.*, *fabric*).

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacFarlane/Fabbri as applied to claim 1 above, and further in view of Nakamura (US 4,987,552).

MacFarlane does not disclose expressly wherein the style database further comprises instructional data comprising a multimedia presentation or a video presentation. Nakamura shows this feature to be old in the style art. Nakamura discloses personalized cosmetics videos (*col. 1, 30-36*). Nakamura teaches that women request this information frequently (*col. 1, 18-27*). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention from the teaching of Nakamura to modify the style database of MacFarlane/Fabbri by including the instructional data of Nakamura to provide information that women request frequently and to facilitate learning of the proper application of cosmetics to achieve the desired effects.

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Claims 7, 23 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacFarlane/Fabbri as applied to claim 1 above, and further in view of Rifkin et al. (US 6,065,969).

MacFarlane/Fabbri does not disclose expressly wherein said input device comprises a digital camera or camera. However, Rifkin teaches such (*col. 3, 58-64*). Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate a digital camera into the method and system of MacFarlane/Fabbri, in light of the teaching of Rifkin, in order to communicate a digitized picture.

Claims 11, 21, 31 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacFarlane/Fabbri as applied to claim 1 above, and further in view of Thies et al. (US 5,206,804).

MacFarlane/Fabbri discloses applicant's basic inventive concept of a style database, substantially as claimed, but does not expressly disclose said style database further comprises footwear information. Thies shows this feature to be old in the style art. Thies discloses a database containing footwear information (*col. 6, 66-68*). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention from the teaching of Thies to modify the style database of MacFarlane/Fabbri to include the footwear of Thies to provide more fashion options for the user.

Response to Arguments

Applicant's arguments filed April 8, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that MacFarlane is limited to the use of only one physical characteristic and specifically that MacFarlane teaches away from the use of other characteristics, the examiner notes the further inclusion of Fabbri in the rejection of the claims. Although MacFarlane bases the determination on one characteristic, it does not expressly disqualify the use of other attributes. Fabbri expressly teaches the desirability of using both skin tone and eye color in making this type of selection in col. 1, 44-52.

Additionally, applicant argues that MacFarlane does not teach capturing actual physical characteristic data from an individual. MacFarlane shows capturing the actual skin tone of a user, as shown in the section cited above.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hirsch et al. (US 5,643,341) discloses a database on a computer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Andrew Stallard whose telephone number is (571)

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272-2685. The examiner can normally be reached on 9:15 am to 6:45 pm - Mon - Fri (1st Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

J. Andrew Stallard
Examiner
Art Unit 3715


KATHLEEN MOSSER
PRIMARY EXAMINER